

CR 07 00373

RS

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

2007 JUN 13 P 2:48

SAN JOSE DIVISION

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA., S.J.

En

THE UNITED STATES OF AMERICA

vs.

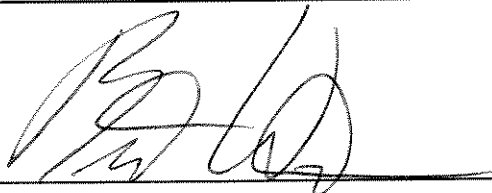
NED ROSCOE and JOHN ROSCOE

INDICTMENT

COUNT ONE: Title 18, United States Code, Section 371- Conspiracy

COUNT TWO THROUGH SIX: Title 18, United States Code, Section 1344(2) - Bank Fraud

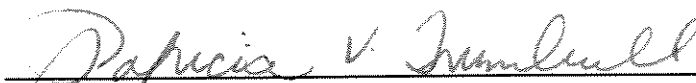
A true bill.



Foreperson

Filed in open court this 13 day of June

A.D. 2007



UNITED STATES MAGISTRATE JUDGE

Bail. \$ warrants - no bail (stayed until June 27, 2007)

SCOTT N. SCHOOLS (SCBN 9990)
United States Attorney

FILED

2007 JUN 13 P 2:49

E-FILED

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

NED ROSCOE, and
JOHN ROSCOE,

Defendants.

No.

CR 07 00373 RMW

VIOLATIONS: 18 U.S.C. § 371 –
Conspiracy; 18 U.S.C. § 1344(2) – Bank
Fraud; Aiding and Abetting – 18 U.S.C. § 2.

SAN JOSE VENUE

INDICTMENT

The Grand Jury charges:

COUNT ONE: (18 U.S.C. § 371 – Conspiracy to Commit Bank Fraud)

1. In and between about late 2002 and November 2003, in the Northern District of California, and elsewhere, the defendants,

NED ROSCOE and
JOHN ROSCOE,

did knowingly and intentionally conspire with each other and with others known to the Grand Jury to commit an offense against the United States, to wit, bank fraud, in violation of 18 U.S.C. § 1344(2).

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INDICTMENT

1 8. In the Spring of 2003, R.M. met with Ned and John Roscoe. R.M. told the two
2 owners that he was not comfortable continuing to overstate the Company's inventory in the
3 borrowing base reports to the bank. R.M. refused to sign the certification to the bank. Ned
4 Roscoe took the report, signed it, and had it faxed to the bank.

5 9. The defendants continued to cause the Company to report artificially inflated
6 inventory amounts in its weekly borrowing base reports. As a result, by November 2003, the
7 defendants had caused the bank to extend approximately \$10.6 million of loans in excess of the
8 amount the bank would have lent on the Company's true borrowing base inventory.

9 10. The defendants caused the Company to report fraudulently inflated figures to
10 Comerica Bank in a variety of ways, including as follows:

11 a. In 2003, the Company entered into an agreement with another tobacco
12 company, hereinafter referred to as B.T., in which Ned Roscoe, through the Company, requested
13 B.T. to invoice purchases of Revenge Brand cigarettes at \$27.64 per carton. In truth and in fact,
14 the Company paid B.T. \$6.80 per carton of Revenge Brand cigarettes. The cost the Company
15 later reported to Comerica on borrowing base certificates was not the actual cost of \$6.80 per
16 carton, but rather the inflated invoice cost of \$27.64 per carton. These fraudulent
17 misrepresentations accounted for more than \$1 million in overstatements in the weekly
18 borrowing base inventory reports the Company made to Comerica Bank.

19 b. According to the loan agreement, cigarettes at Company stores were
20 required to be valued at cost. Despite this requirement, the Company reported the retail value of
21 the cigarettes in its weekly inventory reports to the bank. These fraudulent misrepresentations
22 accounted for more than two million dollars in overstatements in the weekly borrowing base
23 inventory reports.

24 c. According to the loan agreement, the Company was only permitted to
25 include cigarette products in its borrowing base inventory certificate reports under certain
26 circumstance; that is, once the cigarettes had arrived at the Company's warehouse or once the
27 Company had taken possession of cigarette products while they were in transit to the Company's
28 retail stores. However, the Company included cigarette products that had not yet been

1 manufactured and that were weeks from being delivered in its weekly inventory reports. The
2 fraudulent misrepresentations described in this sub-paragraph resulted in approximately six to
3 seven million dollars in overstatements in the weekly borrowing base inventory reports submitted
4 to Comerica Bank.

5 11. In November 2003, R.M. met with Ned and John Roscoe to discuss R.M.'s
6 continuing concern regarding the overstatements in the Company's weekly inventory reports to
7 Comerica Bank. John Roscoe told R.M. that he was being too conservative and that he (R.M.)
8 was "worried about going to jail," or words to that effect.

9 12. In late November 2003, Ned Roscoe instructed accountants to provide an analysis
10 comparing figures the Company had reported to the bank in weekly reports and a strict
11 interpretation of the loan agreement's borrowing base provisions. An accountant reported that,
12 as of November 11, 2003, the discrepancy between the inventory figures the Company had
13 provided to the bank and the correct figures was approximately \$16.5 million dollars. After
14 reviewing the report and discussing it with R.M., Ned and John Roscoe agreed on a fraudulent
15 strategy that they would tell Comerica Bank officials that differences in their weekly inventory
16 reports were the result of "clerical or accounting errors."

17 Overt Acts Committed In Furtherance of the Conspiracy

18 13. In furtherance of the conspiracy, the defendants, and others known to the Grand
19 Jury committed the following overt acts, among others, on or about the dates set forth below:

20 a. In May/June 2003, Ned and John Roscoe met with R.M. to discuss R.M.'s
21 concern that the Company was reporting inaccurate and inflated figures in its borrowing base
22 inventory reports to Comerica Bank.

23 b. In May/June 2003, Ned Roscoe fraudulently signed and sent a borrowing
24 base report to Comerica Bank, knowing that it contained inflated and inaccurate inventory
25 amounts.

26 c. On August 22, 2003, Ned Roscoe fraudulently signed and sent a
27 borrowing base report to Comerica Bank which reflected a bill-in value of inventory in excess of
28 cost and which valued the Company's inventory at retail rather than at cost.

d. In September 2003, Ned Roscoe fraudulently entered into a product purchase agreement with B.T., and caused B.T. to invoice the Company in amounts substantially greater than what the Company had actually paid for cigarettes purchased from B.T.

e. In September 2003, Ned Roscoe sent a fraudulent borrowing base inventory report to Comerica Bank, which contained inflated values of cigarette purchases from B.T.

f. In late November 2003, the defendants falsely told and/or caused others to falsely inform Comerica Bank officials that overstatements in weekly Borrowing Base inventory reports were due to "clerical or accounting errors."

All in violation of Title 18, United States Code, Section 371.

COUNTS TWO THROUGH SIX: (18 U.S.C. §§ 1344(2) and 2 – Bank Fraud and Aiding and Abetting)

14. The factual allegations contained in paragraphs 2 through 13 are realleged and incorporated as if fully set forth here.

15. In and between about late 2002 and November 2003, in the Northern District of California, and elsewhere, the defendants,

NED ROSCOE and
JOHN ROSCOE,

did knowingly devise and execute a material scheme and artifice to defraud and to obtain monies, funds, and credits under the custody and control of Comerica Bank, a financial institution, the deposits which were at the time insured by the Federal Deposit Insurance Corporation, by means of materially false and fraudulent pretenses, representations and promises, as set forth below:

Count	Approximate Date of Borrowing Base Inventory Report sent to Comerica Bank	Description of Fraudulent Representation in Borrowing Base Inventory Report
2	August 22, 2003	Retail value reported instead of actual cost of cigarettes.

3	September 26, 2003	Retail value reported instead of actual cost of cigarettes. Inflated cost of B.T. cigarettes reported instead of actual cost.
4	October 3, 2003	Retail value reported instead of actual cost of cigarettes reported to bank. Inflated cost of B.T. cigarettes reported instead of actual cost.
5	November 7, 2003	Retail value instead of actual cost of cigarettes reported to bank. Also inflated in-transit inventory and cost of B.T. cigarettes.
6	November 14, 2003	Retail value instead of actual cost of cigarettes reported to bank. Also inflated in-transit inventory and cost of B.T. cigarettes.

All in violation of Title 18, United States Code, Sections 1344(2) and 2.

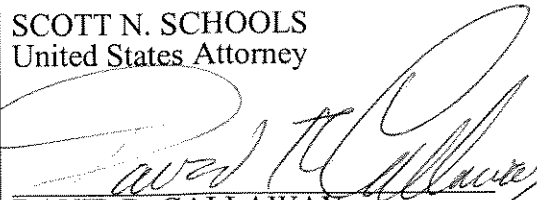
DATED:


13-JUN-2007

A TRUE BILL.


FOREPERSON

SCOTT N. SCHOOLS
United States Attorney


DAVID R. CALLAWAY
Deputy Chief, San Jose Branch Office

(Approved as to form: )
AUSA Singh

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT
 BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT
☐ SUPERSEDING
OFFENSE CHARGED

SEE ATTACHMENT

☐ Petty
☐ Minor
☐ Misdemeanor
☒ Felony

PENALTY:

SEE ATTACHMENT

CR**PROCEEDING**

Name of Complainant Agency, or Person (& Title, if any)

S/A Rob Gunderson-F.B.I.

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21 or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:

☐ U.S. Att'y ☐ Defense

☐ this prosecution relates to a pending case involving this same defendant

☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

SHOW DOCKET NO.

MAGISTRATE CASE NO.

 Name and Office of Person
 Furnishing Information on
 THIS FORM

SCOTT N. SCHOOLS

☒ U.S. Att'y ☐ Other U.S. Agency

 Name of Asst. U.S. Att'y
 (if assigned)

CARLOS SINGH

 Name of District Court, and/or Judge/Magistrate Location
 NORTHERN DISTRICT OF CALIFORNIA

DEFENDANT - U.S.

JOHN ROSCOE

 DISTRICT COURT NUMBER
 U.S. DISTRICT COURT
 NO. DIST. OF CA. S.J.
07 00373 RMW**DEFENDANT****IS NOT IN CUSTODY**

- 1) ☒ Has not been arrested, pending outcome this proceeding.
 If not detained give date any prior summons was served on above charges
- 2) ☐ Is a Fugitive
- 3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

- 4) ☐ On this charge
- 5) ☐ On another conviction
- 6) ☐ Awaiting trial on other charges
- If answer to (6) is "Yes", show name of institution

 Has detainer
 been filed? ☐ Yes ☐ No

 If "Yes"
 give date
 filed

 DATE OF
 ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

Month/Day/Year

 DATE TRANSFERRED
 TO U.S. CUSTODY

☐ This report amends AO 257 previously submitted
ADDITIONAL INFORMATION OR COMMENTS**PROCESS:**
☐ SUMMONS ☐ NO PROCESS* ☒ WARRANT Bail Amount: NO BAIL

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address:

 *Where defendant previously apprehended on complaint, no new summons
 or warrant needed, since Magistrate has scheduled arraignment

Date/Time:

Before Judge:

Comments: WARRANT-NO BAIL *STAY TWO WEEKS*

Penalty Sheet Attachment

Count One: Conspiracy

Maximum Penalties:

5 years imprisonment

\$250,000 fine

3 years supervised release

\$100.00 special assessment

Count Two through Six: Bank Fraud (each count)

Maximum Penalties:

30 years imprisonment

\$1 million fine

5 years supervised release

\$100.00 special assessment

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT
 BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT
☐ SUPERSEDING
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☐ Petty
☐ Minor
☐ Misdemeanor
☒ Felony

PENALTY:

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PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

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 THIS FORM

SCOTT N. SCHOOLS

☒ U.S. Att'y ☐ Other U.S. Agency

 Name of Asst. U.S. Att'y
 (if assigned)

CARLOS SINGH

 Name of District Court, and/or Judge/Magistrate Location
 NORTHERN DISTRICT OF CALIFORNIA

DEFENDANT - U.S.

2007 JUN 13 P 2:49

NED ROSCOE

RICHARD W. WIEKING
CLERK

DISTRICT COURT NUMBER

U.S. DISTRICT COURT
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IS IN CUSTODY

- 4) ☐ On this charge
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- If answer to (6) is "Yes", show name of institution

 Has detainer been filed? ☐ Yes ☐ No

If "Yes" give date filed

DATE OF ARREST

Month/Day/Year

Or... If Arresting Agency & Warrant were not

Month/Day/Year

DATE TRANSFERRED TO U.S. CUSTODY

☐ This report amends AO 257 previously submitted
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